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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

May 27 3 28 PM '99

JUDITH L. CORLEY
(202) 434-1622

May 27, 1999

Michael Lehmann
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

**Re: MUR 4759 - Phillip J. Maloof, Friends of Phil Maloof and
Dolores Gonzales, as Treasurer, Supporters of Phil Maloof and
Theresa Keaveny, as Treasurer**

Dear Mr. Lehmann:

This is the response of the above-named Respondents to the Commission's letter of March 31, 1999. We ask that, for the reasons discussed below, the matter be dismissed and the Commission take no action.¹

A dismissal with no action is warranted because of the de minimis nature of the matters raised in the complaint. As the committees of a first time federal candidate, operating in a complicated situation with two elections at the same time, it is not unexpected that there would be some confusion in the campaign. The actions of the Committees did not deceive the public in any way.

The facts recited by the General Counsel's Factual and Legal Analysis demonstrate that the Statement of Candidacy was filed by Mr. Maloof's campaign 13 days after it was due. Mr. Maloof himself did not know that the form had been filed late. It is not clear what harm this late filing may have caused that would warrant the Commission devoting its scarce resources to pursuing this matter. The public was

¹ We understand that this matter will remain confidential during the pendency of the Commission's consideration.

clearly informed of his candidacy -- more so even than it would have been with the filing of a Statement of Candidacy -- by his public announcement. His campaign committee had no obligation to file any reports or other information during this 13-day period.

It is especially confusing given the disparate treatment of the campaign when compared to that given incumbent Members of Congress. The Commission has had a practice of notifying incumbents by letter that they appear to have exceeded the \$5,000 threshold for candidacy. They are allowed to submit their Statement of Candidacy late -- often significantly later than 13 days -- without any action by the Commission. We would ask that the Commission not take any action on this matter as well.

Regarding the materials in question produced by Mr. Maloof's two principal campaign committees, the Committees had admitted in an earlier filing that the materials in question did not contain an adequate "paid for by" disclaimer. (The invitation did contain best efforts and IRS disclaimers). There are, however, significant additional factors that we believe the Commission should take into consideration in deciding this matter.

Attached to this letter are two letters, one from Tom Hujar of FDR Services and another from Susan Burnside of Burnside & Associates, and an Affidavit of James H. Koch, regarding the omission of the disclaimer from the campaign materials. Attachment A As recounted in these statements, the campaign hired a consultant, FDR Services, to handle the operations of the campaign. In the case of the absentee ballot mailing, the consultant, Mr. Hujar, contracted with another outside consultant, Burnside & Associates, to produce and distribute the mailing. Mr. Hujar relied on the outside consultant to ensure that all legal requirements for the mailing would be met. He acknowledged to Mr. Koch that in reviewing the mailing before it was sent, he did not notice that there was not an appropriate disclaimer. Ms. Burnside has also acknowledged that her staff did not detect that the mailing did not contain a disclaimer.

The billboards/posters and fundraising invitation at issue were also prepared under the direction of FDR Services. In neither case did the consultant realize that the materials were distributed without a proper disclaimer. According to Mr. Hujar, in the case of the billboards, the matter was corrected within 10 days of realizing the mistake. He takes full responsibility for the omission.

It is important to know that neither the candidate, Phil Maloof, nor any of the staff of the campaign reviewed these materials before they were distributed or were aware that the materials had been distributed without a proper disclaimer. The Committees did not intend to distribute any materials without a proper disclaimer. These instances were the exception rather than the rule for the campaign. Other materials produced by the campaign did include a proper disclaimer. See examples in Attachment B.

In their earlier filing, the Committees also noted that each of the three items in question contained information that would give clear notice to the reader of who was the sponsoring entity. All three used the distinctive logo for the campaign or its campaign slogan, both of which were widely distributed as "brands" for the campaign. The fundraising invitation was for an event held at the candidate's mother's home, with instructions to make checks payable to Supporters for Phil Maloof. The absentee ballot mailing included a cover letter on Maloof campaign stationery with a picture of the candidate.

The Committees are not arguing that these factors take the place of an adequate disclaimer. These facts do, however, support the argument that the public policy purpose underlying the disclaimer provisions was not seriously compromised by the lack of a disclaimer. There was no attempt to mislead the public and no confusion on the part of the public as to the party sponsoring and paying for the communications in question.

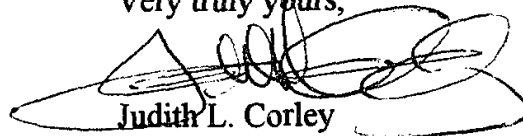
The Commission has in prior MURs taken into consideration the fact that someone outside the campaign was responsible for the omission of a disclaimer. See, for example, MUR 4842, 4154, 3739, 3739. In these cases, the Commission saw fit to take no further action. That is the appropriate result in this case, as well.

The Commission has often cited the volume of complaints filed as a factor in its inability to quickly investigate and resolve matters pending before it. By investigating and pursuing a matter such as this, the Commission is in fact encouraging the filing of more of these complaints -- Complainants know full well that these complaints will not be dismissed before the election and file a constant

barrage against a candidate for press purposes only. The Commission could reduce the volume of such "strike" complaints, if it acted quickly to dismiss them.²

The facts of this case warrant such treatment. The omission of the disclaimer was inadvertent and isolated. We ask again that the Commission dismiss this matter and take no further action on it.

Very truly yours,



Judith L. Corley
Counsel to Respondents

enclosures

² At least one Commissioner has questioned the constitutionality of the disclaimer requirement altogether. (Statement of Reasons of Commissioner David M. Mason in MUR 4741)

BEFORE THE FEDERAL ELECTION COMMISSION
MUR 4759

AFFIDAVIT OF JAMES H. KOCH

STATE OF NEW MEXICO)
)ss.
COUNTY OF BERNALILLO)

I, James H. Koch, having first been duly sworn and upon my oath, hereby state as follows:

1. I have personal knowledge of the facts set forth herein and, if called to testify in this matter, I would testify as set forth herein.

2. During the 1998 campaign, I served as an unpaid advisor to Phil Maloof and his two campaign committees, Friends of Phil Maloof and Supporters of Phil Maloof ("the Campaign") on various issues. I have known the family for thirty years.

3. I have served in the New Mexico Legislature for eight years and on the New Mexico state Campaign Ethics Committee by appointment of the Speaker of the House for six years.

4. The Campaign hired F.D.R. Services, Inc. as a consultant to manage campaign operations. The senior partner of F.D.R. Services, Inc., Tom Hujar, was responsible for the day-to-day activities of the Campaign.

5. In May, 1998, a mailing of absentee ballot applications was sent out on behalf of the Campaign. The design and printing of those absentee ballots applications was directed by F.D.R. Services, Inc. in Seattle, Washington. Due to issues raised under New Mexico law, the mailing was stopped before it was completed. The Campaign asked me to investigate what had happened.

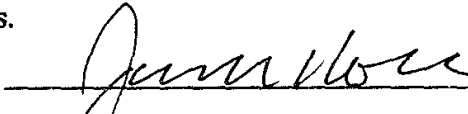
6. I found that Mr. Hujar of F.D.R. Services, Inc. had arranged with an outside consultant to prepare and handle the mailing. Mr. Hujar said that he had relied upon them to ensure that all legal requirements for the mailing would be met.

7. Mr. Hujar and Mr. Hujar alone had contact with the Burnside and Associates. Mr. Hujar alone reviewed the mailing before it went out. Neither the candidate, Phil Maloof, nor any staff of the Campaign reviewed the mailing before it was sent.

8. The billboards in question were also designed, produced and distributed by F.D.R. Services, Inc. under the direction of Mr. Hujar.

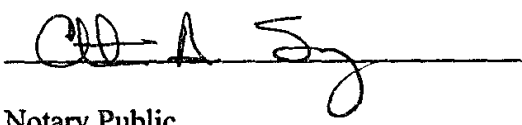
9. The fund raising invitations in question were also designed, produced and distributed by F.D.R. Services, Inc. under the direction of Ms. Dia Hujar, wife of Mr. Hujar. The invitations were addressed and mailed by office volunteers.

After the special election, Phil Maloof instructed me to discharge F.D.R. Services, Inc., Mr. Tom Hujar and Ms. Dia Hujar. The primary reason for this dismissal was their inappropriate handling of the aforementioned items.


James H. Koch

SUBSCRIBED AND SWORN to before me by Mr. James H. Koch this 21st day of May, 1999.




Notary Public

My Commission Expires:

August 7, 2002

(Click here and type address)

facsimile transmittal

To: Mr. Jamie Koch Fax: 505-989-9186
 From: Tom Hujar Date: 05/21/99
 Re: Maloof Campaign Pages: 1
 CC: Phil Maloof

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

To Whom It May Concern:

As the Senior Partner of FDR Services Inc., I was hired by the Friends of Phil Maloof and Supporters of Phil Maloof to manage the campaign's operations. In that capacity, I hired another firm Burnside & Associates to supervise the drafting, printing and mailing of a sample absentee ballot that was sent to potential voters in May 1998. It is my understanding that this mailing did not have a proper disclaimer as required by the federal campaign laws.

In addition, there was a complaint filed regarding four billboards that the campaign purchased. For a very short period of time, these billboards did not have the proper disclaimer. When we realized our mistake, a disclaimer was printed and put up on the billboards within a ten day period.

In both instances, the mistakes were inadvertent. In terms of the mailing, it is important to note that neither the candidate, Phil Maloof, nor any other member of the campaign staff saw a copy of the mailing before it was sent out. It was my responsibility to ensure that the mailings and billboards were done properly and met federal disclaimer requirements. These mistakes were my fault and I accept full responsibility.

Sincerely yours,

Thomas Hujar
 Tom Hujar

Post-It Fax Note	7671	Date	5-20-99	Page	1
To	Colleen Maloof	From	Jamie Koch		
Co./Dept.		Co.	Burnside & Associates		
Phone #		Phone #	505 982 4302		
Fax #	505 224-9486	Fax #	505 982 6720		
Please call Jamie after reading this					

RECEIVED DATE : 05/20/99 13:58 FROM : 842 3032

Burnside & Associates

Political Consultants

direct mail • vote by mail and grassroots field programs

May 20, 1999

Dear FPPC:

As you know the Absentee Mail from Phil Maloof mailed to Democratic primary voters did not contain a disclaimer indicating that it was paid for by Friends of Phil Maloof.

Our staff determined that the most economical way to include the disclaimer was to laser it onto the printed page when the personalization process took place. It is my understanding that the laser shop was instructed to do so although I have no written documentation to that effect. In any event, when we proofed the setups from the laser shop, our staff and Tom Hujar did not detect that the disclaimer was not included. Therefore the absentee form mailed with out the disclaimer.

Our vendor was completely at fault for this error but we ultimately didn't catch the error. It was our job to make certain that the disclaimer was included and that your concerns about its absences were addressed prior to mailing. I apologize and accept full responsibility for this mistake.

We produced three other mailers for the Maloof campaign they all had a disclaimer. The other mailers are enclosed for your record!

Sincerely,



Susan Burnside

ATTACHMENT B

**COME MEET PHIL MALOOF,
YOUR FUTURE VOICE IN CONGRESS
FOR THE 21ST CENTURY**

FRIDAY, MARCH 27, 1998

5:30 - 8:00PM

**WHERE: JOE AND IRENE SERNA'S HOUSE
9506 DENEEN DR. NW**

**ENJOY MARIACHIS, GREAT MEXICAN FOOD, AND COOL MARGARITAS.
GET TO KNOW PHIL.**

**DONATION: \$21.00 FOR THE 21ST CENTURY
(ALL CONTRIBUTIONS ACCEPTED)**

**DIRECTIONS: STARTING POINT: PASSEO DEL NORTE & NORTH COORS, GO NORTH ON COORS
PAST IRVING BLVD (STOP LIGHT); CONTINUE NORTH ABOUT A 1/4 OF A MILE. ON THE RIGHT
SIDE OF COORS IS ENTRANCE TO RIVERFRONTE ESTATES. TAKE RIGHT AND FOLLOW THE SIGNS
AND BALLOONS TO DENEEN DR.**

HOSTED BY: JOE AND IRENE SERNA, GUY AND FRANCES RIORDAN, & MARYANN WITHROW

PAID FOR BY FRIENDS OF PHIL MALOOF

PHIL MALOOF

A NEW GENERATION

OF LEADERSHIP

Phil
MALOOF
for Congress
Democrat

A
new
generation
of
leadership.

* Paid for by:

Friends of Phil Maloof

1319 Sun Pedro NE

Albuquerque, NM 87110

Phone: 505-260-1998

Fax: 505-260-1411

Announcement
Only 1-14-98

# of pages	5
F. MALOOF	
2714	

Dear Diane,

I wanted to personally write to let you know of my plans for the new year. I have spent the last few months talking with a large number of people in our community and, after much soul searching, I have decided to announce my candidacy for the First Congressional District in New Mexico. As someone whose opinion I value, I wanted to let you know in advance that I am running and the reasons why.

Before I get into reasons why I am running, I wanted to personally invite you to attend my campaign kickoff announcement on Wednesday, January 14, at 5:30 to 7:00 p.m. in the West Mesa Community Center, 5500 Glen Rio Road on the West Side of Albuquerque (in my Senate District). It will be a special moment for my family and I hope that you will be able to share it with us. There will be food and entertainment and a relatively short speech.

Over the last four years, I have represented the growing neighborhoods of the West Side of Albuquerque in the New Mexico Senate. I've won two elections, and along the way learned a great deal about the problems facing our community. Truly, it has been both challenging and a rewarding experience. First and foremost, it has taught me the importance of working with neighborhood associations, school PTAs and other local citizen groups to develop policies and solutions to local problems. It is a lesson that I will take back with me when I begin my career in the U.S. House of Representatives.

2

[illegible]

3

A hand-drawn map of the area around the Christ Church. The map shows several streets: Tropicana Ave. running horizontally across the top, Rainbow Blvd. running vertically in the center, and Tropicana Ave. running horizontally at the bottom. Other streets shown include Jones Blvd., Chester Blvd., and Tropicana Blvd. The Christ Church is located on Rainbow Blvd. between Tropicana Ave. and Jones Blvd. The Virgin Shrine is located on Tropicana Ave. to the right of the church. The Tropicana Hotel is located on Tropicana Ave. to the left of the church. The map also shows a compass rose indicating North (N), South (S), East (E), and West (W). Various landmarks and buildings are labeled, including the Christ Church, the Virgin Shrine, the Tropicana Hotel, and the Tropicana Motel. The map is oriented with North at the top.

Map To George Malool's Home:

honoring
Senator Phil Maloof
Candidate for U.S. Congress
on
Thursday, May 14, 1998
6:00 - 8:00 p.m.

at the home of

Mr. George Maloof
Spanish Trail Country Club - West Gate
74 Innisbrook Avenue
Las Vegas, Nevada 89113

(Buffet & No-Host Bar)

Special Performance by the "Leisure Lizards"

(Suggested contribution \$500 per person)

You are cordially invited to join

Senator Phil Maloof
Candidate for U.S. Congress

For a sit down candlelight dinner
At the home of Colleen Maloof

Wednesday, May 6, 1998 at 6:30 p.m.

4317 Altura Street Northeast
Albuquerque, New Mexico

\$500

Cocktail Attire

RSVP Jill Baca or Dia Hujar at

Paid for by the Friends of Phil Maloof • 1319 San Pedro NE • Albuquerque, NM 87110

Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in a calendar year. Contributions are not tax deductible. Corporate contributions are not permitted. Produced by FDR Services.

U.S. GOVERNMENT PRINTING OFFICE: 1967 O - 346711

BULK RATE
US POSTAGE
PAID

Permit #1924
Albuquerque, N.M.

Thank
You!!

1967 O - 346711

For Your Support & Patience

A personal message from Phil Maloof

Dear Neighbor:

I want to thank you for applying to vote by home for the June 23 special election. As you know, this is a very important election for the future of New Mexico. Please don't let the confusion and tone of the campaign discourage you from voting.

You should receive your ballot in the next few days - if you have not already. The Clerk is doing the best she can to give you enough time to vote.

PLEASE VOTE IMMEDIATELY! The deadline is fast approaching - you will need to mail your ballot on or before **Saturday June 20th** if it is to be received on time. The ballot requires 52¢ in postage stamps in order to be delivered to the clerk.

In Congress, I will work to improve our schools, to make our streets safer, and to protect New Mexico seniors. I am endorsed by all area principals, and over 3,000 teachers. I passed the toughest criminal legislation in the history of New Mexico and I am proud to be endorsed by the the Fraternal Order of Police.

If my staff can be of assistance with any voting problem or clarify the vote at home process, please call Sean at 232-0930.

The concerns of New Mexican families deserve a voice. I hope I can count on your support.



Paid for by Supporters of Phil Maloof, 1319 San Pedro, Albuquerque, NM 87110

25

BULK RATE
US POSTAGE
PAID
Permit #1924
Albuquerque, NM

Why should the

**SOUTH
WALLEY**

Vote

for

Phil

MALOOF

?

PHIL MALOOF FOR SENATE

Because he knows our

COMMUNITY

Dear Neighbor,

The south Valley deserves a Congressman that knows the history and diversity of this great community. As a native New Mexican, I can guarantee that I will work hard in Washington for the working people of the south Valley and all New Mexicans.

P.S. If you need a ride to vote early or on Election Day, June 23, call 877-7794.



ENDORSED BY:

REPRESENTATIVE HENRY "KIKI" SAAVEDRA
REPRESENTATIVE JAMES TAYLOR
REPRESENTATIVE DAN SILVA
COMMISSIONER STEVE GALLEGOS

YOU
VOTE
HERE



ELECTION DAY

VOTE TODAY

POLLS OPEN 7AM-7PM

FOR A RIDE TO THE POLLS, PLEASE CALL (505) 232-0930

Phil
MALLOOF

**DEMOCRAT
For Congress**

"I was born, raised and educated here in New Mexico. As your State Senator, I worked hard to improve education, reduce crime and fight for Senior Citizens. I want the opportunity to represent you. Please vote today and send a message that New Mexican families need representation from someone who is a native New Mexican."



IMPORTANT MESSAGE

Your vote will decide the winner. Not voting today is a vote for Phil's opponent. The Republican Party's attack campaign is designed to keep you at home today. Your vote will send a message that dirty politics is not acceptable in New Mexico.